

**Office of the Chancellor
Pennsylvania's State System of Higher Education
University Operations Procedure/Standard Number 2019-41**

**Sick, Parental and Family Care Absence, Military Exigency Absence and Military Caregiver
Absence Procedure for Nonrepresented Employees**

Approved by:  _____

Date: 11/25/19 _____

Revised:

History: Application of absences for sick, parental and family care under the Family and Medical Leave Act of 1993 (FMLA) for nonrepresented employees followed the Commonwealth Management Directive 530.2, Sick Leave Without Pay, Parental Leave Without Pay, and Family Care Leave Without Pay dated March 12, 2008. This Management Directive has since been rescinded by the Commonwealth and replaced with Management Directive 530.30 Sick, Parental and Family Care Absence, Military Exigency Absence and Military Caregiver Absence Policy. This procedure is intended to update the procedure for the application of Sick, Parental and Family Care Absence, Military Exigency Absence and Military Caregiver Absence under the Family Medical Leave Act of 1993 (FMLA) for nonrepresented employees, using Management Directive 530.30 as guidance.

Related Policies, Procedures, or Standards:

2011-08-A HR Manual of Commonwealth Management Directives and Manuals
PA_1040_BPP Personnel Adm—LOA Paid, Unpaid, and Return Actions
PA_1041_BPP LOA Eligibility by Personnel Subarea
PA_1041_BPQ LOA Eligibility Reason Codes

Key words/Categories: Personnel; FMLA

I. Introduction

The Management Directive 530.2 Sick Leave Without Pay, Parental Leave Without Pay, and Family Care Leave Without Pay contains the current provisions for the administration of FMLA absences. Effective with leaves that commence on or after the beginning of the 2020 leave calendar year, this Procedure and Standard will replace any previous applications, policy and procedures for nonrepresented employees and will follow Management Directive 530.30. The leave entitlement for sick, parental, family care, military exigency and military caregiver absences, meet or exceed those required by the federal FMLA Act.

II. Definitions

- A. **Nonrepresented employees**—Group of employees absent a right to bargain collectively.
- B. **FMLA**—*The Family and Medical Leave Act of 1993 (29 U.S.C. §2601, et seq.)* is the federal law that requires qualifying employers to provide at least 12 weeks of unpaid leave with benefits within a 12-month period to eligible employees due to: a

serious health condition of an employee that makes the employee unable to perform the functions of the employee's job; a serious health condition of a family member when the employee is attending to the medical needs of the family member; for adoption or foster care placement of a child; or because of any qualifying exigency arising out of the fact that the employee's family member is a military member on covered active duty (Military Exigency Absence.) The FMLA also requires employers to provide at least 26 weeks of unpaid leave to an employee within a single 12-month period for the serious injury or illness of a covered servicemember or covered veteran who is an employee's family member when the employee is needed to care for the covered servicemember or covered veteran (Military Caregiver Absence).

III. Family and Medical Leave Act (FMLA) Leave

A. General

1. After completing one year of service a nonrepresented employee shall be granted up to 12 weeks of FMLA leave with benefits, on a rolling twelve-month year basis, provided the nonrepresented employee has at least 1250 hours of actual work time within the twelve months preceding the commencement of the leave. Leave under this Section may be approved on an intermittent, reduced time, or full-time basis. Leave entitlement will be pro-rated for eligible nonrepresented part time employees based on the nonrepresented employee's percentage of full-time regular hours worked.
2. FMLA leave shall be granted for the following reasons:
 - a. when the illness or disability is due to an employee's serious health condition.
 - b. when attending to the medical needs of a spouse, parent, son or daughter or other person qualifying as a dependent who has a serious health condition.
 - c. when becoming parents through childbirth or formal adoption or placement of a child with an employee for foster care.
 - d. when a qualifying exigency event related to a family member who is a military servicemember occurs.
 - e. when an employee attends to the serious injury or illness of a covered servicemember or veteran who is a family member.

If the leave is for a military caregiver under (e) above, 26 weeks of leave within a single 12-month period is provided and other FMLA leave used does not reduce this entitlement. For FMLA leave due to reasons (a), (b), (c), or (d) above, one aggregate 12-week entitlement is provided.

3. Upon request of a permanent, nonrepresented employee, an extension of up to an additional nine months of leave without pay shall be granted for the following reasons:
 - a. employee sickness upon receipt of proof of continuing illness or disability.
 - b. family care reasons upon receipt of proof of continuing illness or disability of the family member and need to care for the family member.
 - c. parental reasons.

The extension shall be with benefits for the first 14 weeks and shall be without benefits for the remainder of the extension. Such extensions shall be contiguous to the termination of the 12-week FMLA entitlement. It shall not be used on an intermittent or reduced-time basis. Leave entitlement will be prorated for eligible nonrepresented part time employees based on the nonrepresented employee's percentage of full-time regular hours worked.

4. Upon request, up to 13 weeks (91 calendar days) of leave without pay without benefits may be granted to a permanent nonrepresented employee with less than one year of employment, provided the absence is at least two consecutive weeks in duration; however, only one occasion within a twelve-month rolling year may be approved.
5. This section shall not apply to a compensable work-related injury.

B. Granting Leave

1. A nonrepresented employee shall submit written notification to their immediate supervisor stating the anticipated duration of the leave at least two weeks in advance if circumstances permit, in accordance with the following:
 - a. For an employee with a serious health condition, proof of illness or disability in the form of a doctor's certificate which shall state a prognosis and expected date of return is required.
 - b. For an employee caring for family members, documentation supporting the need for care is required.
 - c. For an employee who becomes a parent, documentation is required and FMLA leave shall begin whenever the employee requests on or after the birth, adoption or foster care placement; however, it may be used prior to the date of custody or placement when required for adoption or placement to proceed, and no FMLA leave shall be granted beyond one (1) year from the date of birth, of assuming custody of an adopted child or of placement of a foster child.
 - d. In no case shall an employee be required to commence FMLA leave sooner than he/she requests, unless the employee can no longer satisfactorily perform the duties of their position.

C. Re-employment

1. A permanent nonrepresented employee shall have the right to return to the same or an equivalent position, with regard to pay and skill, as the position held before going on leave as described in Section III, A. 1. and the first 14 weeks of leave as described under Section III, A.3.
2. Upon the expiration of the re-employment rights under subsection 1 or subsection 3, and upon written request to return to work, a permanent nonrepresented employee may be offered a position for which they are qualified, and for which a vacancy exists and the university intends to fill. If such a position is not available, the nonrepresented employee may be offered, during the remainder of the extension period, any position for which a vacancy exists and which the university intends to fill. If the nonrepresented employee refuses an offer of a position for which they qualify, their rights under this Section shall terminate.

3. Nonrepresented employees who use 26 weeks or more of paid leave (12 weeks of leave under Section III, A.1. and the first 14 weeks of leave under Section III, A. 3) and who return to work before or upon the exhaustion of the paid leave will have the same return rights as described in subsection 1. Return rights after paid leave is exhausted, if the absence is more than 26 weeks (12 weeks of leave under Section III, A.1. and the first 14 weeks of leave under Section III, A. 3) are in accordance with subsection 2.

D. Annual, Sick, Personal, and Holiday Leave

1. A nonrepresented employee using FMLA leave for military exigencies or military caregiving, must use all applicable, accrued paid leave types upon commencement of FMLA leave. For all other FMLA leave, a nonrepresented employee shall be required to use all applicable accrued paid sick leave (sick family for family care reasons) as certified by a health care provider upon commencement of FMLA leave, except as provided in subsection 2. below. A nonrepresented employee shall not be required to use annual, personal or holiday leave upon commencement of FMLA leave. Any paid leave used will run concurrently with and reduce the entitlements under Section III, A.1. Unused leave shall be carried over until return.
2. A nonrepresented employee may choose to retain up to 10 days of accrued sick leave. The choice to retain or not retain sick leave cannot be made retroactively, and saved days will be measured based on accrued sick leave available at the commencement of the absence. Saved days may be used during the 12-week entitlement as certified by a physician; such sick leave will run concurrently with and reduce the entitlement. Days saved and requested for intermittent or reduced-time absences for periods less than two consecutive weeks after the first 12-week entitlement will be reviewed for approval under the provisions of approving paid Sick days; such use will not be counted against the FMLA entitlement.
3. A nonrepresented employee who has accrued more than 12 weeks of paid leave is not limited to 12 weeks of leave. Leave in excess of 12 weeks shall not be designated as FMLA leave, but will be granted according to the applicable paid leave absence approvals.

E. Benefits

1. Employer-paid coverage for life insurance and employer payments toward coverage for health benefits will continue during FMLA leave under Section III, A.1. and for the benefit-eligible period of leave for a nonrepresented employee under Section III.A.3.
2. The continuation of benefits is subject to the nonrepresented employee's payment of any required employee contribution for the health benefits.

F. Definitions

1. For the purpose of Section III, "parent" shall be defined as the biological, adoptive, step or foster parent of the employee or an individual who stood in

- loco parentis to an employee when the employee was a son or daughter.
2. For the purpose of Section III, “son or daughter” shall be defined as a biological, adopted, foster child, a step-child, a legal ward, or a child of a person standing in loco parentis who is: under eighteen (18) years of age; or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

G. Guidelines

1. It is understood that the provisions of this Section III are consistent with the Pennsylvania Human Relations Act, 43 P.S. Sections 951, et seq., and the Family Medical Leave Act of 1993, 29 U.S.C. Sections 2601, et seq.

Effective Date— January 4, 2020